

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Accelerating Wireline Broadband Deployment |) | WC Docket No. 17-84 |
| by Removing Barriers to Infrastructure |) | |
| Investment |) | |

COMMENTS OF ADTRAN, INC.

ADTRAN, Inc. (“ADTRAN”) files these comments addressing some of the issues in the Commission’s proposal to adopt procedures and policies that would help accelerate broadband deployment by removing many of the current barriers to infrastructure deployment.¹ Robust and ubiquitous broadband is critical to maintaining America’s leading role in the global economy, as well as in assuring an educated, informed and healthy citizenry. As explained below, ADTRAN believes the public interest will best be served by the Commission’s adopting the proposals to remove unnecessary regulatory barriers so that private investment in broadband flourishes, thus accelerating wireline broadband deployment.²

ADTRAN, founded in 1986 and headquartered in Huntsville, Alabama, is a leading global provider of networking and communications equipment. ADTRAN’s products enable voice, data, video and Internet communications across a variety of network infrastructures.

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, FCC 17-37, released April 21, 2017, 82 Fed Reg 22453 (May 16, 2017) (hereafter cited as “*Accelerating Wireline Broadband NPRM*”).

² In a companion proceeding, the Commission is addressing means to accelerate deployment of wireless broadband services. *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, FCC 17-38, released April 21, 2017, 82 Fed Reg 21761 (May 10, 2017).

ADTRAN's solutions are currently in use by service providers, private enterprises, government organizations and millions of individual users worldwide. ADTRAN thus brings an expansive perspective to this proceeding, as well as an understanding of the importance to individuals, communities and our country of robust and ubiquitous broadband. ADTRAN has been a strong advocate in Commission proceedings to help spur broadband deployment,³ and has itself launched a gigabit initiative that has far surpassed its goal of facilitating the deployment of 200 gigabit communities by the end of 2015, with over 350 gigabit communities deployed as last year.⁴

There can be little disagreement on the importance of broadband in today's society. Broadband Internet access is critical to education, health care, political discourse, governmental services and economic development in American communities. It is also become essential for households' entertainment and staying connected to friends and family. And while great progress has been made in deploying broadband services to most communities – as ADTRAN

³ E.g., Comments of ADTRAN in GN Docket No. 15-191, filed September 15, 2015; Comments of ADTRAN in WC Docket No. 10-90 *et. al.*, filed August 8, 2014; Comments of ADTRAN in WC Docket No. 10-90, filed March 28, 2013; Comments of ADTRAN in WC Docket No. 10-90 *et. al.*, filed January 18, 2012; Comments of ADTRAN in WC Docket No. 10-90 *et. al.*, filed April 18, 2011.

⁴ See, *Press Release*, "ADTRAN Sets the Nation's Communities on the Path to Gigabit Transformation -- Utilities, MSOs and land developers deliver Gigabit broadband to over 350 communities," <http://phx.corporate-ir.net/phoenix.zhtml?c=67989&p=irol-newsArticle&ID=2178711>; <http://gigcommunities.net/adtran-reaches-200-gigabit-community-milestone/> ("More than 200 communities are now able to access [next-generation gigabit broadband services](#) as a result of ADTRAN's Enabling Communities, Connecting Lives program, ADTRAN announced August 11."); *Light Reading*, August 13, 2014, "Adtran Launches 'Gig Communities' Initiative," available at <http://www.lightreading.com/broadband/fttx/adtran-launches-gig-communities-initiative/d/d-id/710330>. See also, <http://gigcommunities.net/>.

has experienced through its Gigabit Communities project⁵ -- there are still some communities or pockets within communities that lack access to robust broadband services. The *Accelerating Wireline Broadband NPRM* seeks to harness and maximize investment in broadband deployment to enhance the robustness and ubiquity of broadband throughout the United States. ADTRAN fully supports this goal, and comments below on some of the specific Commission proposals.

One of the current barriers to broadband deployment identified in the *Accelerating Wireline Broadband NPRM* is the complexity and delays caused by resolving disputes over pole access.⁶ The Commission suggests that one means of minimizing the delays is to impose a “shot clock” on Enforcement Bureau resolution of pole attachment complaints.⁷ The problem with such a proposal is that there does not seem to be any suitable penalty that can be imposed if the 180-day (or other prescribed) period is exceeded. In other contexts, failure of the Commission to act by a prescribed deadline can have defined consequences. For example, failure to act on a tariff filing or a forbearance petition by the deadline means that it will be “deemed lawful” (in the case of a tariff) or “deemed granted” (in the case of a forbearance petition).⁸

⁵ See, note 4, *supra*.

⁶ *Accelerating Wireline Broadband NPRM* at ¶¶ 3-55. ADTRAN adopts the Commission’s use of “pole attachments” to include access to poles, ducts, conduits, and rights-of-way. *Ibid.* at n. 3.

⁷ *Accelerating Wireline Broadband NPRM* at ¶ 47.

⁸ 47 U.S.C. §204(a)(3) (“A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice ***shall be deemed lawful*** and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period, as is appropriate.”)(emphasis added); 47 U.S.C. §160(c) (“Any such petition ***shall be deemed granted*** if the Commission does not deny the petition for failure to meet the requirements for forbearance under subsection (a) within one year after the Commission receives it, unless the one-year period is extended by the Commission. The

But in this situation, where the role of the Enforcement Bureau is to resolve a dispute between two parties, it would be unfair to penalize arbitrarily one of those parties by deeming a pole access complaint as granted or denied as a result of the Enforcement Bureau's failure to meet a Commission-prescribed deadline. ADTRAN suggests instead that the Commission establish the 180-day (or shorter) timeline for resolving such complaints, and that the Commission closely monitor the Enforcement's compliance with those timelines. Moreover, the Commission should commit to providing additional resources to the Bureau if the Commission finds the "shot clock" is being exceeded.

As part of the discussion of easing access to poles, the *Accelerating Wireline Broadband NPRM* also seeks comment on means of making it easier and more transparent to gain access to conduit.⁹ ADTRAN agrees that shared use of conduit, where it is available, is an economic way to speed fiber deployment. But conduit will not always be available, particularly for distribution links (as opposed to feeder fiber, where existing conduit is more likely to exist). In that case, current and anticipated technology for micro-trenching and micro-and sub-ducts, at 12" to 18" depths, along with advanced boring techniques to deal with sidewalks, driveways, and narrow subdivision streets, will provide an economical way to deploy distribution fiber. Unfortunately, however, there are local regulatory barriers to such deployments, because most municipalities require 32" depth. ADTRAN thus urges the Commission to use this proceeding and/or the Broadband Deployment Advisory Committee processes to eliminate this artificial barrier to economic deployment of fiber.

Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of subsection (a).") (emphasis added).

⁹ *Accelerating Wireline Broadband NPRM* at ¶¶ 30-31.

The *Accelerating Wireline Broadband NPRM* also identifies as a barrier to new wireline broadband investment delays in allowing Incumbent local exchange carriers (“ILECs”) to retire copper lines and replace them with newer technologies.¹⁰ While fiber provides robust broadband capabilities, ADTRAN also knows first-hand that copper loops are not an obsolete technology. DSL and Ethernet over Copper technologies have continued to evolve, and currently are able to support robust high-speed services. Significant enhancements have been made in improving the capacity/throughput of DSL by advances such as G.fast, pair-bonding and vectoring. These advances allow carriers to take full advantage of the extensive base of copper loops that currently comprise much of the telecommunications plant in service. G.fast is the latest in a series of technologies including VDSL2 and ADSL2+ that has steadily increased the capacity available to subscribers over the copper loop plant. This technology, which is deployed from distribution points located deep in the outside plant, can deliver combined upstream and downstream speeds of up to 1 Gbps over short loops, and hundreds of Mbps on loops of up to several hundred meters.¹¹

On the other hand, fiber tends to provide greater capacity over longer distances and is less expensive to maintain. ADTRAN believes that the carrier is in the best position to determine which technology will be most efficient and best meet its customers’ needs. And that decision should not be influenced by regulations that require carriers to maintain dual networks or needlessly delay deployment of new technologies. Imposing such costs on the carriers deters the deployment of advanced broadband capabilities.

¹⁰ *Accelerating Wireline Broadband NPRM* at ¶¶ 57-59.

¹¹ E.g., “ADTRAN Advances Gigabit Society with Latest G.fast Innovations,” available at <http://www.adtran.com/index.php/adtran-advances-gigabit-society-with-latest-g-fast-innovations>.

One way in which the Commission could minimize unnecessary delays would be to shorten the current 180-day notice period that applies to the retirement of copper loops.¹² ADTRAN believes that the Commission could halve the notice period to 90-days, but provide a mechanism for affected end-user or carrier customers to extend the implementation of the copper retirement for one additional 90-day period by filing an explanation of why the extension is necessary (along with a certification – under penalty of perjury -- that the request is being made in good faith so as to avoid the risk of bad faith requests). Such a procedure should allow the notice period to be reduced in most cases.

The *Accelerating Wireline Broadband NPRM* also seeks comment on the issue of whether the ILEC must also treat its carrier customers' end-user customers as its own for purposes of Section 214(a) service discontinuance purposes.¹³ From a practical standpoint, ADTRAN does not believe it makes sense to impose obligations on the ILEC with respect to end-users with which it has no comity and about whom it has no knowledge. Moreover, from a competitive standpoint, presumably the competitive carrier does not want the ILEC to be collecting information on the competitive carrier's customers. And as the *Accelerating Wireline Broadband NPRM* recognizes, those competitive carrier customer's end users are still directly afforded the protections of Section 214 as a result of the obligations imposed on their carrier. Thus, ADTRAN believes the Commission can and should reverse the prior "clarification" which held of that a carrier customer's end users must be considered in determining whether it is necessary for the ILEC to obtain Section 214 discontinuance authority.

The *Accelerating Wireline Broadband NPRM* also seeks comment on whether the

¹² *Accelerating Wireline Broadband NPRM* at ¶ 59.

¹³ *Accelerating Wireline Broadband NPRM* at ¶ 90.

Commission should revisit the earlier *sua sponte* Declaratory Ruling that applied a “functional test” when assessing whether contemplated network changes comprise a discontinuance, reduction, or impairment of service of service under Section 214(a) that would necessitate Commission approval.¹⁴ ADTRAN agrees that under contract law and the Filed Rate doctrine, the carrier contract or tariff defines the “service” offered by the carrier. Although the Supreme Court in the *Brand X* decision accepted the Commission’s use of consumers’ perceptions in assessing the vague term “offer” for purposes of the statutory definition of “telecommunications service” under Section 153(53),¹⁵ that does not compel the Commission to continue to use the “functional test” test in determining what “service” a carrier offers for purposes of Section 214. The issue of whether the telecommunications component of an information service is a separate offering is distinct from the issue of whether a carrier – as opposed to end user perceptions or uses made of the service provided by the carrier -- determines what telecommunications services that carrier is providing.

In the *Technology Transitions Declaratory Order*, the Commission adopted a very vague “functional test” standard that it would use to assess what service it believed the carrier was providing:

In sum, we clarify and reiterate that the Commission looks beyond the terms of a carrier’s tariff, and instead it applies a functional test that takes into account the totality of the circumstances from the perspective of the relevant community or part of a community, when analyzing whether a service is discontinued, reduced, or impaired under section 214. ... Not every functionality supported by a network is de facto a part of a carrier’s “service.” An important factor in this analysis is the extent to which the functionality traditionally has been relied upon by the community.¹⁶

¹⁴ *Accelerating Wireline Broadband NPRM* at ¶¶ 115-122.

¹⁵ *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 990 (2005).

¹⁶ *Technology Transitions et al.*, GN Docket No. 13-5 et al., 29 FCC Rcd 14968 at ¶¶ 117-119.

Given such a nebulous standard, a carrier would have little confidence that planned upgrades will not lead to excessive delays while awaiting regulatory approvals.

Moreover, the open-ended standard could impose regulatory burdens on the carrier for discontinuing “services” it had no idea it was providing, based on customer usage or perceptions about which the carrier had no knowledge. As a result of the Commission’s *Carterfone*¹⁷ and subsequent Part 68 Rules, a carrier does not know whether a customer is using that carrier’s offerings -- such as “plain old telephone service” -- as the communications channel for services such alarm monitoring or facsimile. And if customer perception is critical, then we might still be requiring carriers to utilize switchboard operators, who were thought of as the “social media” of that era, providing not only telephone connections, but also the latest news, weather, sports results, the correct time of day, and even gossip.

The *Accelerating Wireline Broadband NPRM* raises a related issue of what constitutes “service” discontinuance or impairment for determining whether Commission approval is required when a particular offering may be eliminated, but the overall “service” that a community receives is not discontinued, reduced, or impaired.¹⁸ ADTRAN believes that where overall service to the community continues, it makes little sense to impose regulatory burdens on the carrier for changes to particular offerings. Indeed, the *proviso* to Section 214(a) reflects a Congressional determination not to require Commission approval for minor changes in plant, operation or equipment that does not impair the adequacy of service.¹⁹ Narrowly construing

¹⁷ *Use of the Carterfone Device in Message Toll Telephone Service*, 13 F.C.C.2d 420, 424 (1968).

¹⁸ *Accelerating Wireline Broadband NPRM* at ¶ 123.

¹⁹ 47 U.S.C. 214(a):

“service” to include particularized offerings runs counter to the directive to avoid such micromanagement.

ADTRAN supports the Commission’s goal of removing regulatory barriers that retard the deployment of wireline broadband services. As explained above, some of the Commission’s previous decisions run the risk of increasing uncertainty, escalating costs or adding unnecessary delays, thus slowing the carriers’ deployment of advanced broadband services. The *Accelerating Wireline Broadband NPRM* suggests a number of “course corrections” to these earlier efforts so as to make it easier for carriers to deploy new wireline technologies. Modifying those decisions as suggested in the *Accelerating Wireline Broadband NPRM* and discussed by ADTRAN in these Comments will minimize the costs, delays and uncertainties, and thus help accelerate the deployment of wireline broadband services. Such actions will thus well serve the public interest.

Respectfully submitted,
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Provided, however, That nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.